

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 8076 of 1997

07-03-2007

Between:-

The Visakhapatnam Port Trust,
Rep., by its Chairman,
Visakhapatnam.

Petitioner

And

The Chairman and Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Visakhapatnam and another.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 8076 of 1997

Oral order:

Heard Sri A. Krishnam Raju, learned counsel for the petitioner and Sri G. Vidyasagar, learned counsel for the second respondent.

The writ petition is fundamentally misconceived and is illustrative of the litigiousness of the Vishakapatnam Port Trust, Visakhapatnam (for short 'the Port Trust'). One P.S. Patrudu was appointed as a Checker on 10-10-1974. He was promoted *ad hoc* as a Junior Clerk with effect from 20-07-1978 and thereafter reverted as Checker on 05-09-1978. On 05-09-1978, on revision Patrudu was treated as holding the post of Checker on a regular basis. Again on 05-02-1980 Patrudu was regularly promoted as a Junior Clerk. During 1978-1980

also Patrudu worked as a Junior Clerk on an *ad hoc* basis in several broken spells, in the exigency of service. With effect from 05-02-1980 however he was promoted as a Junior Clerk on regular basis and put on probation.

On 08-02-1980 Patrudu was promoted to the next higher post of Time Keeper and his pay was fixed reckoning the pay he was drawing as a Junior Clerk with effect from 05-02-1980. On this account, the pay of three other Time Keepers, who were seniors to Patrudu had to be jacked up to conform to the principle that a senior employee should not draw lesser pay than his junior.

In 1996, on an assumption that Patrudu's pay was irregularly fixed in the category of Time Keeper reckoning his pay as Junior Clerk on 05-02-1980, his pay fixation was rescinded and recoveries were directed. All this without notice and opportunity either to Patrudu or the other Time Keepers. Consequently, the affected workmen – Patrudu and his colleagues, Time Keepers – filed W.P.No. 93803 of 1996. The writ petition was disposed of by the judgment dated 12-04-1989 invalidating the exercise of cancellation of pay fixation and recoveries on the ground that it violated the essential principle of natural justice – *Audi alteram partem*. The court however preserved liberty in the Port Trust to take an appropriate decision after notice and opportunity.

A notice was thereafter issued on 21-07-1989 to Patrudu and the other workmen and eventually by

proceedings dated

07-02-1991 recoveries were again directed against all the workmen including Patrudu. Aggrieved thereby, the Union of the Workmen sought a reference of the dispute and the Government of India referred to the Industrial Tribunal-cum-Labour Court, Vishakapatnam the dispute as to whether the Port Trust was justified in recovering the salary from Patrudu and others on the ground that pay fixation was not properly done (in 1980). The reference, numbered as I.T.I.D.No. 3 of 1993 (Central), was considered and an award was passed by the Industrial Tribunal on 12-04-1996.

The Industrial Tribunal, Vishakapatnam concluded that there was no Regulation of the Port Trust which mandated that a probationary Junior Clerk could not be promoted as a Time Keeper, nor was there any Regulation which prohibited a probationary Junior Clerk promoted as Time Keeper from having his pay in the promoted post determined with reference to the pay last drawn in the lower post of Junior Clerk. Both in the Industrial Tribunal and in this Court, the Port Trust would place reliance on Regulation 8 of the Visakhapatnam Port Employees (Recruitment, Seniority and Promotion) Regulations, 1964 (for short 'the Regulations'), which deals with the aspect of probation. According to Regulation 8 of the Regulations a person promoted to a post including to the post of Junior Clerk shall be on

probation for a period of two years, extendable by a further period of one year and terminable on unsatisfactory service. Reliance on this Regulation is a *non-sequitur*. There is no other Regulation of the Port Trust brought to the notice of this court either, which disables the promotion of a probationary Junior Clerk as a Time Keeper. The Regulations also ordain that appointment to the post of Time Keeper shall be by promotion from Junior Clerk failing which from the category of Checker. In the text and phraseology of the promotion regulation, a person could be promoted as a Time Keeper from the category of Checker only if no person holding the post of Junior Clerk were available. The Industrial Tribunal therefore rightly concluded that as Patrudu was available from the category of Junior Clerk, though in the status of a probationer, the Port Trust could not have appointed a person holding the post of a Checker as a Time Keeper and had rightly promoted Patrudu as a Time Keeper since he was holding the post of a Junior Clerk. In any event, it is not the case of the Port Trust either before the Industrial Tribunal or before this court that the very promotion of Patrudu as a Time Keeper with effect from

08-02-1980 was irregular or unauthorized and that he was liable to be reverted as a Junior Clerk. No rational reasons are discernable for this writ petition.

On the analysis above, this court finds no error in

the award of the Industrial Tribunal dated 12-04-1996 in I.T.I.D.No. 3 of 1993 (Central), warranting interference in judicial review. There are no merits. The writ petition is accordingly dismissed, but in the circumstances, without costs.

GODA RAGHURAM, J

Dated:07-03-2007

Pvks/*